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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,278	12/04/2003	Peter E. Raber	08814-00002	7151
21918	7590	05/17/2005	EXAMINER	
DOWNS RACHLIN MARTIN PLLC			MACK, RICKY LEVERN	
199 MAIN STREET			ART UNIT	
P O BOX 190			PAPER NUMBER	
BURLINGTON, VT 05402-0190			2873	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓ K E F

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/728,278	RABER, PETER E.	
	Examiner	Art Unit	
	Ricky L. Mack	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) 1-17, 31-41 and 63-81 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-30 and 42-62 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1203</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> .                  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of claims 18-20, 22-26, 30, 42-48, 52-58 and 62 in the reply filed on 3/3/05 is acknowledged. The traversal is on the ground(s) that (1) many claims are generic and (2) that there is no additional burden on the examiner. This is not found persuasive because (1) the claims, though broad, are directed to unique embodiments and some claims worded such that they would require unique classification searching and (2) due to the quantity of claims and independent claims that have unique features, the examiner would be faced with at inventions of multiple scopes, classifications and embodiments.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 21, 27-29, 49-51 and 59-61 depend from elected independent claims 18, 42 and 57 and have been added to the elected claims for examination. Claims 18-30 and 42-62 will be examined in this action.

3. Claims 1-17, 31-41 and 63-81 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species (*and see item 2*), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/3/05.

4. This application is in condition for allowance except for the presence of claims to an invention non-elected with traverse in the reply filed on 3/3/05. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass

the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

*Allowable Subject Matter*

5. Claims 18-30 and 42-62 are allowed.

6. The following is an examiner's statement of reasons for allowability: The prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claim(s), in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper.

The prior art fails to teach a combination of all the claimed features as presented in claim(s) 18-30, 42-56 and 62, wherein the claimed invention comprises a substrate having a plurality of optical elements arranged in concentric arcs and movable with respect to the substrate, as claimed.

The prior art fails to teach a combination of all the claimed features as presented in claim(s) 57-61, wherein an optical system comprises an electrovariable optic having a plurality of focal configurations and a comprising a plurality of flexible electrodes that each include a flexible optical element and a controller which along with the flexible electrodes moves each flexible optic to provide the plurality of focal configurations, as claimed.

The combination of all the claimed features are not anticipated or made obvious by the prior art and all of said features are relied upon for a determination of allowability.

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited for disclosing an optical device comprising variable focusing elements, but these references do not disclose a substrate having a plurality of optical elements arranged in concentric arcs and movable with respect to the substrate, as claimed; or an optical system comprises an electrovariable optic having a plurality of focal configurations and a comprising a plurality of flexible electrodes that each include a flexible optical element and a controller which along with the flexible electrodes moves each flexible optic to provide the plurality of focal configurations, as claimed: Wohlstadter (5986811, 6014259, 6437920 and 6683725).

8. This application is in condition for allowance except for the following formal matters:  
See item 4 above.


Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **ONE MONTH** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky L. Mack whose telephone number is (571) 272-2333. The examiner can normally be reached on Monday-Friday (6:30 AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ricky L. Mack  
Primary Examiner  
Art Unit 2873

RM  
May 15, 2005